

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

AMO DEVELOPMENT, LLC,  
AMO MANUFACTURING USA, LLC  
and AMO SALES AND SERVICE,  
INC.,

Plaintiffs,

v.

ALCON VISION, LLC,  
ALCON LABORATORIES, INC. and  
ALCON RESEARCH, LLC,

Defendants.

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ALCON INC., ALCON RESEARCH,  
LLC, and ALCON VISION, LLC,

Counterclaim Plaintiffs,

v.

AMO DEVELOPMENT, LLC,  
AMO MANUFACTURING USA, LLC  
AMO SALES AND SERVICE, INC.,  
and JOHNSON & JOHNSON  
SURGICAL VISION, INC.,

Counterclaim Defendants.

C.A. No. 20-842 (CFC) (JLH)

**REDATED - PUBLIC VERSION**

**PLAINTIFFS' RESPONSE TO ALCON'S CONCISE STATEMENT OF  
FACTS IN SUPPORT OF ALCON'S MOTION FOR SUMMARY  
JUDGMENT (NO. 2) THAT ONLY AMO DEVELOPMENT, LLC IS  
ENTITLED TO ACTUAL DAMAGES**

**Original Filing Date: September 23, 2022**

**Redacted Filing Date: October 6, 2022**

TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Description of Document</b>
2	Schmidt Opening Expert Report
19	March 7, 2022 J&J Corrected Objections and Responses to Alcon's Sixth Set of Interrogatories [No. 32]
20	February 22, 2022 Plaintiffs' Response to 5th Set of Interrogatories [No. 26]
21	AMO Employment Agreement with Rick Duff
22	AMO Employment offer Letter to Brent Schellhase
23	March 4, 2022 Plaintiffs' 2nd Suppl. Responses to 5th Set of Interrogatories [No. 27]
24	Manufacturing, Supply and License Agreement, effective January 1, 2015
25	Distribution and License Agreement, effective January 1, 2008
26	Amended and Restated Agreement for Sharing Intangible Development Costs dated November 8, 2017
27	Transfer and Assignment of Copyright, effective April 2, 2007
28	Certificates of Copyright Registration
29	March 4, 2022 Plaintiffs' 4th Suppl. Responses to Interrogatory No. 11
30	Stamm Opening Expert Report

**CONCISE STATEMENT OF FACTS**

**I. RESPONSE TO ALCON’S CONCISE STATEMENT OF FACTS**

1. J&J asserts that “AMO Development owns the Asserted Copyrights (and all rights thereunder, including the right to file suit).”<sup>2</sup> D.I. 141 ¶55; *see also id.* ¶¶446, 451 (“AMO Development owns the Asserted Copyrights in the iFS® Laser computer programs . . . .”); *id.* ¶457 (“AMO Development owns the Asserted Copyrights in the confidential submissions made to the FDA to seek regulatory approval for the iFS® Laser and IntraLase Fusion Laser . . . .”); *id.* ¶462 (“AMO Development owns the Asserted Copyright in the IntraLase FS Laser operator’s manual.”); [REDACTED]

**Response: Undisputed.**

2. Abbott Medical Optics, Inc. acquired OptiMedica Corp. in 2013.

[REDACTED]

[REDACTED] A2, OptiMedica Acquisition Press Release.

**Response: Undisputed.**

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Response: Undisputed.**

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Response: Undisputed.**

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Response: Disputed.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

**Response: Undisputed.**

## **II. ADDITIONAL MATERIAL FACTS**

7. AMO Development is a legal owner of the copyrighted works, as identified in the September 2, 2020 registrations. Ex. 28 at JJSV\_00021188-1223.

8. JJSV was likewise a legal owner in certain of the copyrighted works, by virtue of work for hire and/or assignment. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Prior to this litigation, JJSV assigned its legal rights in the asserted copyrights to AMO Development in a transfer and assignment agreement, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. JJSV is also a beneficial owner of the asserted copyrights due to JJSV's and its subsidiaries' economic interest in the exploitation of exclusive rights in the iFS software. [REDACTED]

[REDACTED]

[REDACTED]

11. JJSV and its subsidiaries AMO Manufacturing, AMO Sales and Service, and AMO Ireland share management, sales, and marketing functions. Ex. 19 at 17; Ex. 23 at 4-5.

12. As copyright owner, JJSV was and is injured by Alcon's infringement. JJSV sells the Catalys laser system, which competes with LenSx. Ex. 19 at 17-19.

13. As copyright owner, JJSV was and is also injured due to injuries to its subsidiaries, AMO Manufacturing, AMO Sales and Service, AMO Ireland. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. AMO Development licensed relevant intellectual property to AMO Manufacturing, AMO Sales and Service, and AMO Ireland, so they could manufacture, sell, and service the iFS and Catalys systems. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Anthony D. Raucci*

OF COUNSEL:

Michael A. Morin  
Matthew J. Moore  
Sarang V. Damle  
Rachel Weiner Cohen  
Susan Y. Tull  
Carolyn M. Homer  
Holly K. Victorson  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004  
(202) 637-2200

Roger J. Chin  
Joseph R. Wetzel  
Allison Harms  
LATHAM & WATKINS LLP  
505 Montgomery Street, Suite 2000  
San Francisco, CA 94111  
(415) 491-0600

S. Giri Pathmanaban  
LATHAM & WATKINS LLP  
140 Scott Drive  
Menlo Park, CA 94025  
(650) 328-4600

P. Anthony Sammi  
Rachel Renee Blitzer  
LATHAM & WATKINS LLP  
1271 Avenue of the Americas  
New York, NY 10020  
(212) 906-1200

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Jack B. Blumenfeld (#1014)  
Brian P. Egan (#6227)  
Anthony D. Raucci (#5948)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
jblumenfeld@morrisnichols.com  
began@morrisnichols.com  
araucci@morrisnichols.com

*Attorneys for Plaintiffs and  
Counterclaim Defendants  
AMO Development, LLC,  
AMO Manufacturing USA, LLC,  
AMO Sales and Service, Inc. and  
Johnson & Johnson Surgical Vision, Inc.*



Aaron Macris  
LATHAM & WATKINS LLP  
200 Clarendon Street  
Boston, MA 02116  
(617) 948-6000

September 23, 2022

**CERTIFICATION**

This brief complies with the type and word limitation in Paragraph 24(c) of the Scheduling Order (D.I. 61) because it is written in 14-point Times New Roman font and contains 923 words according to the word count feature of Microsoft Word, and collectively with the opposition briefing on the summary judgment motion and other *Daubert* motions filed herewith, does not exceed the 12,500 word limit set forth in the Scheduling Order.

*/s/ Anthony D. Raucci*

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Anthony D. Raucci (#5948)

**CERTIFICATE OF SERVICE**

I hereby certify that on September 23, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on September 23, 2022, upon the following in the manner indicated:

John W. Shaw, Esquire  
Karen E. Keller, Esquire  
Andrew E. Russell, Esquire  
David M. Fry, Esquire  
SHAW KELLER LLP  
I.M. Pei Building  
1105 North Market Street, 12th Floor  
Wilmington, DE 19801  
*Attorneys for Defendants  
and Counterclaim-Plaintiffs*

*VIA ELECTRONIC MAIL*

Joshua L. Simmons, Esquire  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022  
*Attorneys for Defendants  
and Counterclaim-Plaintiffs*

*VIA ELECTRONIC MAIL*

Jeanne M. Heffernan, Esquire  
James John Lomeo, Esquire  
KIRKLAND & ELLIS LLP  
401 Congress Avenue, Suite 2500  
Austin, TX 78701  
*Attorneys for Defendants  
and Counterclaim-Plaintiffs*

*VIA ELECTRONIC MAIL*

Caroline Lourgou, Esquire  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, IL 60654  
*Attorneys for Defendants  
and Counterclaim-Plaintiffs*

*VIA ELECTRONIC MAIL*

Kristen P.L. Reichenbach, Esquire  
KIRKLAND & ELLIS LLP  
555 California Street  
San Francisco, CA 94104  
*Attorneys for Defendants  
and Counterclaim-Plaintiffs*

*VIA ELECTRONIC MAIL*

Noah S. Frank, Esquire  
Gregg LoCascio, Esquire  
Sean M. McEldowney, Esquire  
Kelly Tripathi, Esquire  
Elizabeth Hedges, Esquire  
Mary E. Miller, Esquire  
KIRKLAND & ELLIS LLP  
1301 Pennsylvania Avenue, NW  
Washington, DC 20004  
*Attorneys for Defendants  
and Counterclaim-Plaintiffs*

*VIA ELECTRONIC MAIL*

*/s/ Anthony D. Raucci*

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Anthony D. Raucci (#5948)